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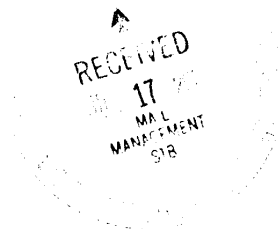
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July 17, 2003

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

208424



Re: Docket No. AB 167 (Sub-No. 1094)A; *Chelsea Property Owners – Abandonment – Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*

Dear Sir:

I am enclosing for filing an original and ten copies of the Statement of the City of New York, New York in this proceeding. An extra copy is enclosed for date stamp and return to our messenger. In addition, we are enclosing a 3.5 inch diskette with this document.

Thank you.

Sincerely,

Alex Menendez

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Office of Proceeding.
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Public Record

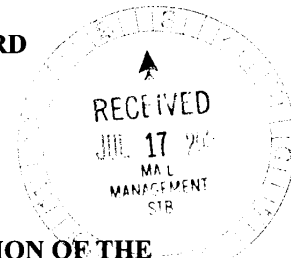
Enclosures

cc: All parties on the attached Certificate of Service

208424
BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. AB 167 (Sub-No. 1094)A

**CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE
CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY
TRACK IN NEW YORK, NEW YORK**



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STATEMENT OF THE CITY OF NEW YORK, NY

Pursuant to the Notice served in this proceeding on June 4, 2003, the City of New York, NY ("the City") hereby submits this Statement as a supplement to the presentation the City will make at the hearing on July 24, 2003.¹ The purpose of this statement is to summarize the City's position on the main issues that remain unresolved herein. These are:

- (1) The City opposes the Motion by Chelsea Property Owners that a Certain Settlement Agreement Satisfies the Surety Condition of the Interstate Commerce Commission's September 16, 1992 Order in this Proceeding (the "CPO Motion"). As the City has previously described, that Agreement is not final and therefore does not resolve all of the issues the parties have struggled to address for over 10 years.
- (2) The City continues to pursue its request for a Certificate of Interim Trail Use and rail banking pursuant to 16 U.S.C. Sec. 1247(d)("CITU"), and hereby requests the

¹ On July 15, 2003, the City filed a Notice of its intent to participate in that hearing.

Board issue a ruling promptly that a CITU may be issued in an adverse abandonment proceeding.

- (3) In view of the Highline's location in a densely developed and populated City, and in view of the complexity created by the need to address all of the facilities that are impacted by the Highline (e.g., the West Side rail yards), the completion of a trail use agreement with the railroad parties will require more time than is normally permitted to conclude such an agreement and that the City requests that it be granted a period of nine (9) months to conclude a trail use agreement with the railroad parties.

The City has already presented a detailed statement of the facts that are pertinent to these issues in the pleadings it has filed since December 2002, and will not burden the record further by repeating them here. In support of its position with respect to these three (3) points, the City states the following:

ARGUMENT

1. There is no final, valid and binding Voluntary Abandonment Agreement.

The Voluntary Abandonment Agreement ("VAA")² has not been executed and delivered by all the parties thereto. Furthermore, subsequent to the execution of the VAA by the City and other parties to the VAA, the railroad parties and the City added requests for several changes to that document. The net effect of those requests is that subsequent to the City's signing the VAA,

² This is the agreement that Chelsea Property Owners has presented to this Board as the Settlement Agreement that satisfies the surety condition in the ICC's 1992 decision in this proceeding.

there has been a rejection and counteroffer by the railroad parties, and a rejection and counteroffer by the City to the railroad parties' counteroffer. Therefore, even if the version of the VAA that CPO presented to this Board were to be executed and delivered by all the parties who have not yet signed, that agreement would still not be final and binding. Both the City and the railroads have withdrawn their previous acceptance of its terms.

Furthermore, the conditions required for implementation of the VAA, including the railroad parties' transferring the easements to the servient property owners and the demolition of the Highline are not in place and are not likely to be in place soon. One of those conditions is the dismissal of all litigation challenging a final abandonment of the Highline. As the City has explained previously, its City Council and others have challenged the City's authority to enter into the VAA in New York State Supreme Court.³ That court ruled that the City lacks authority to enter into the VAA without first obtaining approval under the City's uniform land use review process pursuant to Section 197-c of the City Charter. Since City Council approval is required under ULURP, it is practically certain that, if the lower court decision is ultimately affirmed after exhausting all appeals, the requisite City land use approvals for transferring the easements and demolishing the Highline will be denied.⁴

The VAA is subject to approval by New York City Economic Development Corporation's (EDC's) Board of Directors (or an authorized committee thereof), and is further

³ *The New York Council, et al. v. City of New York, et al.*, Index No. 12222 70/01 (S.Ct. N.Y. County, Part 8, Lebedeff, J.)

⁴ The City has appealed to the New York Appellate Division to overturn the decision; however, consistent with Appellate Division rules, the City has also informed the Appellate Division that the City has applied for a CITU, as opposed to pursuing final abandonment and demolition. Under these circumstances, the Appellate Division has remained silent for over nine months, apparently expecting the appeal to become moot.

subject to the execution and delivery of a funding agreement by EDC, pursuant to which EDC will disburse the \$7 million contribution to fund demolition. Neither EDC nor any other party has signed any such funding agreement which would in any event be subject to approval by EDC's Board of Directors or a duly constituted committee thereof. EDC's mission is economic development. In view of the City's plan to improve the Highline for public open space, with the goal of enhancing the quality of life in the area and thereby enhancing the prospects of further development in the area (as supplemented by a rezoning of the area in coordination with Highline development), EDC's Board of Directors or a committee thereof will not likely approve either a funding agreement or the VAA if the City opposes it.⁵

Finally, the plan for demolition assumes a City contribution of \$381,000. It is unlikely that the City Council, in view of its position in the state court proceedings, will approve a budget item that contains funds for Highline demolition.

2. An expeditious ruling on the request for a CITU would enhance prospects for amicable resolution of this matter.

The City has been willing to negotiate the terms of a trail use agreement, in anticipation of a favorable ruling by this Board on its application for a CITU, since December 2002. The railroad parties are aware of that but are understandably reluctant to engage in this discussion without an answer to the question raised by the property owners as to whether a CITU is available in an adverse abandonment proceeding. A ruling that a CITU is appropriate and may be granted in this context (for the reasons set forth in the City's Reply to Chelsea Property Owner's Reply dated January 24, 2003 (the "City's Reply to Reply")) would enhance the parties'

⁵ The Mayor directly appoints 17 of 33 members of EDC (including the Chairperson), some upon nomination by other public officials, and indirectly (through the Chairperson) appoints the remaining 16 members.

ability to resolve the issues in this proceeding. There are several benefits to this ruling. The parties could discuss their respective rights and obligations with full knowledge of this context in which their discussions are proceeding, allowing the City and the railroad to ascertain the precise nature of the property rights being transferred, if any, and what land use approvals, if any, may be required⁶.

In addition, such a ruling would clarify the parties' respective positions in the discussions between the City and CPO with respect to the conversion of the Highline to open space public recreational use. These discussions are continuing, and the City believes that steady progress is being made to this end and that the prospects of reaching an agreement in the near future are promising. If CPO supports the conversion of the Highline to public use, and the City successfully concludes the form of a trail use agreement with the railroads, then the parties to this proceeding will be in agreement on the future of the Highline, and the Board will not need to render a decision on the merits of the question whether the VAA satisfies the requirements of the ICC's 1992 decision in this proceeding. Therefore, the City reiterates its request that the Board issue a ruling stating that a CITU is available in the context of an adverse abandonment proceeding.

⁶ As discussed in the letter submitted by the City to the Board dated March 19, 2003, the City believes that a trail use agreement does not necessarily involve compliance with ULURP (generally an 8 to 12 month process). The City Council concurs with this position (*see* attachment to March 19 letter). However, if in the final analysis the trail use agreement in fact constitutes a conveyance of an interest in real property, and not a license or agreement to manage and operate the Highline, ULURP approval may be required. The City is willing to negotiate the terms of a trail use agreement in order to determine whether ULURP may be required. If it is, the City could then start the ULURP process expeditiously.

3. The Board should permit the parties to take 270 days to complete negotiation of the trail use agreement.

The history of this proceeding demonstrates that there are no quick solutions and no facile answers to the many questions that arise. If the parties are to proceed with negotiation of a trail use agreement, a number of issues have already been presented by the various parties. The City does not intend to give the Board an impression of insurmountable obstacles to achieving Highline conversion to trail use. The City's plans for the Highline are neither overwhelming nor prohibitively difficult. However, issues continue to arise because the Highline is located in a densely populated and intensively developed City, in an industrial/commercial area which is in transition to lighter commercial and residential uses. It runs through, under or over many properties, the owners of each of which must be heard and satisfied. It includes a large tract of relatively scarce open space (the West Side rail yards) for which development plans have not crystallized.

For example, the means of preserving a connection with the interstate rail network while at the same time permitting demolition of the Highline over the West Side rail yards⁷ is still in the conceptual stage. Although it is not strictly necessary that an alternate facility to maintain the Highline's interstate rail network connection be in place upon the issuance of a CITU, but rather, if the CITU is to remain valid, only before the demolition of Highline segment over the West Side rail yards, the City is keenly interested in assuring that development of the West Side rail yards is not adversely impacted by the existing Highline segment or an alternate facility.

⁷ The Highline connects to the interstate rail network at the West Side rail yards. The City supports demolition of the Highline segment running over the rail yards, and maintains that an alternate facility can be put in place that will permit a connection to remain or to be re-constructed if necessary that does not significantly impact future development of the West Side rail yards.

The City is keenly focused on the development of the West Side rail yards for commercial/residential uses and for the expansion of the Javits Convention Center. The City is also aware that the Metropolitan Transportation Authority ("MTA") and the Convention Center Development Corporation ("CCDC") will desire assurance that the Highline segment over the West Side rail yards may be demolished, and therefore will need to be confident that any alternate facility will be both compatible with West Side rail yard development and meet with all legal requirements. To this end, the City is working closely with development staff of the New York Jets (who propose building a stadium over the West Side rail yards), as well as engineers for the MTA and CCDC, to ensure the availability of an alternate facility that will satisfy the needs of all the interested parties. The City plans to have the course of such an alternate facility plotted and planned, and easements modified or substituted and in place, so that the City, the MTA and CCDC may be assured that Highline demolition over the West Side rail yards is feasible and that the alternate facility needed to maintain the CITU will not conflict with West Side rail yard development plans and that all legal requirements for same will be satisfied. Additional approvals by governmental authorities may be required in the course of planning an alternate facility. For example, approvals may be required by state and local highway authorities, depending upon the route an alternate facility might take. Such planning, obtaining authorizations and preparing documentation will take some time to complete.

That issue, like many others, is already under active consideration. The railroad has previously provided a list of terms for the trail use agreement but no negotiation has occurred because of the uncertainty over whether a CITU can or will be approved in this context. Given

the many issues, parties and potential complications, the 180 days permitted for a CITU applicant to come to closure on a trail use agreement (49 C.F.R. §1152.29(c)(1)), is insufficient. The City requests that the Board permit at least 270 days to reach an agreement to bring this ambitious but achievable and worthwhile endeavor to completion. The City will endeavor, as it is doing now, to bring the proceedings to as expeditious conclusion as is possible.

CONCLUSION

The City appreciates the opportunity the Board has provided for the parties to summarize the status of the issues that remain unresolved in this proceeding. The City continue to believe that a trail use agreement, entered pursuant to a CITU, provides the best resolution of the controversy generated by the question of the future of the Highline. As a result, the City respectfully requests the Board to enter an order:

- (1) that concludes that the VAA is not a final and binding agreement and does not satisfy the requirements of the ICC's 1992 order in this proceeding;
- (2) that concludes that a CITU is available in the context of an adverse abandonment proceeding, permitting the parties to commence negotiation of a trail use and rail banking agreement; and

- (3) that grants the parties a period of 270 days within which to conclude such an agreement.

Respectfully submitted,

THE CITY OF NEW YORK

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Dated: July 17, 2003

Certificate of Service

I certify that on this 17th day of July 2003, I caused a copy of the foregoing Statement of the City of New York, New York to be served by first class mail (or hand delivery for those parties with counsel in Washington, DC) on the parties listed below.

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